IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 757 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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KANTIJI FULAJI RANGOT - Appellant

Versus

STATE OF GUJARAT & ANOTHER – Respondents

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Appearance :
MS SHILPA R SHAH for the Appellant.
MR KT DAVE, ADDITIONAL PUBLIC PROSECUTOR for Respondent No. 1.
None for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 20/12/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. Instant appeal, filed under Section 374 (2) of the Code of Criminal Procedure, 1973, is directed against judgment dated April 27, 2000 rendered by the learned

Additional Sessions Judge, Sabarkantha, Camp: Modasa, in Sessions Case No. 7 of 1998, by which the appellant is convicted for commission of offence punishable under Section 21 read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (“the Act”, for short) and sentenced to suffer RI for 10 years and fine of Rs.1,00,000/- (Rupees One Lakh Only), in default RI for 1 year.

2. The facts emerging from the record of the case are as under:

Mr. D. N. Oza, Intelligence Officer, Narcotic Control Bureau, Zonal Unit, Ahmedabad, received an information on August 31, 1998 that a person named Kantilal Fulaji Rangot was to come in the evening of September 1, 1998 near Meghraj Bus-stand with brown sugar. On receipt of this information, Mr. Oza reduced the same into writing and forwarded his report to Mr. P. S. Tomar, Zonal Director, Narcotic Control Bureau, Ahmedabad Unit, who was his immediate official superior. On receipt of report from Mr. Oza, Mr. P. S. Tomar directed Mr. Oza to seek assistance of Mr. Saikiya, who was in-charge of Anti-terrorist Squad, Ahmedabad, State

of Gujarat. Mr. P. S. Tomar addressed a letter dated August 31, 1998 to the ITO Modasa, District: Sabarkantha and requested to provide *panch-witnesses* whose presence was needed while carrying out the raid. The members of the raiding party collected necessary material, such as, twine, wax, seal, etc. The members of the raiding party went to Meghraj Guest-House where the *panch-witnesses* were summoned. The *panch-witnesses* were conveyed the information received by Mr. Oza. After conveying the information received by Mr. Oza to the *panch-witnesses*, the members of the raiding party proceeded towards Meghraj Bus-stand. The appellant was spotted coming from Meghraj Bus-stand in suspicious circumstances. Mr. Oza intercepted him and introduced himself as well as other members of the raiding party to the appellant. Mr. Oza conveyed information received by him to the appellant and informed the appellant that it was necessary to search his person and that though Mr. P. S. Tomar, who was a Gazetted Officer, was also present, he could be searched in presence of a Magistrate or another Gazetted Officer, if so desired by him. The said offer was declined by the appellant. Thereafter, the person of the appellant was searched, which resulted into find of brown sugar from pocket of shirt put on by him. It was necessary to weigh

the substance found from possession of the appellant and, therefore, services of Mr. Girishbhai Amritlal Soni, who was a Gold-smith, were requisitioned. Mr. Soni weighed the substance found from the possession of the appellant and its weight was ascertained to be 620 Grams. Mr. Oza demanded pass or permit from the appellant authorising him to possess brown sugar, but none could be produced. Thereafter, three samples each of 5 grams were drawn and sealed, as required by law. Mr. D. N. Oza forwarded his report under Section 57(2) of the Act to his immediate official superior. Thereafter, Mr. D. N. Oza served summons, as required by Section 67 of the Act, upon the appellant. After service of summons, the appellant was interrogated. The appellant gave voluntary statements in Hindi language in his own hand-writing on September 1, 1998 and September 2, 1998, which revealed that he in the company of Rajkumar Harilal Gameti, Rakeshkumar Shankarlal Kalal, Shrilal Vasudev Nair and Kantilal Punamchanji Kalal had come on scooter to Meghraj Market and before reaching the market, Rajkumar Harilal Gameti had handed-over packet containing brown sugar to him, which he had kept in pocket of his shirt and he was instructed to hand-over the said packet to Rajubhai of Ahmedbad, but before he could effect the delivery, he was

arrested near the bus-stand. In view of the statements made by the appellant, summons were also issued to others, who were named by him, but could not be served on them, as they were absconding. Thereafter, after recording of statements was over, the appellant was arrested. The sample seized was sent to Forensic Science Laboratory for analysis. The report of the analysis indicated that the substances analysed was heroin within the meaning of the Act.

3. After investigation was over, Mr. J. M. Trivedi, Intelligence Officer of the Narcotic Control Bureau, Zonal Unit, Ahmedabad, who was one of the members of the raiding party, lodged complaint against the appellant and others in the Court of learned Additional Sessions Judge, Himmatnagar (Sabarkantha) and prayed the Court to convict the appellant and others for commission of offence punishable under Section 21 read with Section 29 of the Act. The complaint was ordered to be registered by the learned Additional Sessions Judge *vide* order dated October 30, 1998. The learned Judge framed necessary charge against the appellant at Exh. 9. It was read over and explained to him. He pleaded not guilty to the same and claimed to be tried. The complainant, therefore,

examined: (i) *panch* Janeshchandra Laxmanshankar Upadhyaya as PW 1, at Exh. 17; (ii) Zonal Director, Narcotic Control Bureau, Pavansingh Gajesingh Tomar as PW 2, at Exh. 21; (iii) Assistant Director of FSL, Mr. Mohinder Singh Jageram Dahiya as PW 3, at Exh. 31; (iv) Sepoy of Narcotic Control Bureau Surendra Narayanbhai Datani as PW 4, at Exh. 34; (v) Intelligence Officer in Narcotic Bureau, Ahmedabad, Mr. Jagdishkumar Madanlal Trivedi as PW 5, at Exh. 35; (vi) Raiding Officer Mr. Devdutt Nanalal Oza as PW 6, at Exh. 36; and, (vii) Sepoy from Himmatnagar Sub-jail AbdulGaffur Elahibax Shaikh as PW 7, at Exh. 43 to prove its case against the appellant. The complainant also produced documentary evidence such as: (i) *panchnama* indicating search of person of the appellant and find of brown sugar weighing 620 Grams from pocket of shirt put on by him, at Exh. 18; (ii) statement of the appellant recorded under Section 67 of the Act, at Exh. 22; (iii) seizure memo served on the appellant at Exh. 23; (iv) report by Intelligence Officer, Narcotic Control Bureau, Zonal Unit, Ahmedabad to the learned Chief Judicial Magistrate about seizure of brown sugar from the appellant, at Exh. 24; (v) report under Section 57(2) of the Act by Intelligence Officer, Narcotic Control Bureau to the Zonal Director, at Exh. 25; (vi)

seizure report forwarded to Zonal Director, containing details of brown sugar seized from possession of the appellant and particulars of accomplices named by the appellant, at Exh. 26; (vii) letter by Mr. Dahiya to Mr. D. N. Oza with which report of the sample analysed was sent and report of analysis, at Exh. 32; (viii) another statement of the appellant recorded under Section 67 of the Act, at Exh. 37; (ix) letter by Zonal Director to ITO Modasa to provide witnesses for operation to be conducted under the Act, at Exh. 38; (x) document indicating that information received was reduced into writing by Mr. Oza, at Exh. 40; (xi) memorandum dated September 1, 1998 served on the appellant by Mr. Oza calling upon him to appear in person so that his statements could be recorded, at Exh. 41, etc. in support of its case against the appellant.

4. After recording of evidence of prosecution witnesses was over, the learned Judge explained to the appellant the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement, as required by Section 313 of the Code of Criminal Procedure, 1973. In his further statement, the appellant claimed that a false case was foisted upon

him. He also expressed desire to examine Ashokkumar Harivallabdas Gandhi as Defence Witness. Thereafter, the appellant examined Ashokkumar Harivallabdas Gandhi as Defence Witness 1 at Exh. 48 and himself as Defence Witness 2, at Exh. 49.

5. On appreciation of evidence adduced by the prosecution, the learned Judge found that testimony of (i) Mr. Oza; (ii) Mr. Tomar; (iii) Mr. Upadhyaya; (iv) Mr. Dahiya; and (v) Mr. Trivedi was consistent, trust-worthy and inspiring confidence of the Court and that it was safe for the Court to place reliance on their testimony. After considering the evidence of abovereferredto witnesses, the learned Judge held that it was proved by the prosecution beyond reasonable doubt that on September 1, 1998, the appellant was found in possession of 620 Grams of heroin without pass or permit and that others, who were absconding, and the appellant had abetted each other in commission of offence punishable under the Act, as a result of which the appellant was liable to be convicted for commission of offence punishable under Section 21 read with Section 29 of the Act. The learned judge also considered the evidence adduced by the appellant and deduced that the

same was not reliable at all. In view of abovereferredto conclusions, the learned Judge has convicted the appellant under Section 21 read with Section 29 of the Act and imposed sentence referred to earlier by judgment dated April 27, 2000, giving rise to instant appeal.

6. Ms. Shilpa R. Shah, learned Counsel of the appellant, contended that neither mandatory provisions of Section 42 of the Act nor mandatory provisions of Section 50 of the Act were complied with before effecting search of person of the appellant and, therefore, the appellant should be acquitted. It was argued that the learned Judge of the Trial Court was not justified in accepting the interested version of the prosecution and, therefore, the judgment impugned in the appeal should be set aside. What was maintained by the learned Counsel of the appellant before the Court was that the statements of the appellant recorded under Section 67 of the Act could not have been relied upon by the learned Judge of the Trial Court for fastening criminal liability on the appellant, more particularly, when it was not satisfactorily established that those statements were made voluntarily by the appellant and, therefore, unwarranted conviction of the appellant should be set aside. The learned

Counsel for the appellant pleaded that those accused, who are absconding, could not be apprehended and, therefore, the appellant could not have been convicted for commission of offence punishable under Section 21 of the Act with the aid of Section 29 of the Act. The learned Counsel argued that the alleged find of brown sugar form possession of the appellant is highly suspicious and, therefore, reasonable benefit of doubt, which arises from the facts of the case, should be accorded to the appellant. The learned Counsel of the appellant asserted that the evidence on record has not been appreciated by the learned Judge of the Trial Court in its true perspective and therefore, the appeal should be accepted.

7. Mr. K. T. Dave, learned Additional Public Prosecutor for the State, contended that the testimony of raiding officer Mr. D. N. Oza, which gets complete corroboration from the testimony of his immediate official superior Mr. Tomar, establishes beyond reasonable doubt that mandatory provisions of Section 42 and Section 50 of the Act were complied with and, therefore, the appellant is not entitled to any benefit on the ground that those mandatory provisions were violated by Mr. Oza. The learned Counsel of the State

Government argued that the statements of the appellant under Section 67 of the Act were recorded voluntarily and, therefore, the learned Judge of the Trial Court did not commit any error in placing reliance on them while determining guilt of the appellant. According to the learned Counsel of the State Government, the evidence on record satisfactorily establishes that the appellant was found in possession of heroin without pass or permit and, therefore, his conviction under Section 21 of the Act cannot be regarded as erroneous. The learned Counsel further pleaded that the contents of two statements made by the appellant under 67 of the Act make it very evident that the appellant was aided and abetted, in commission of offence punishable under the Act, by others, who were absconding, and, therefore, his conviction under Section 21 read with Section 29 should not be regarded as unwarranted by this Court. The learned Counsel of the State Government asserted that cogent and convincing reasons have been assigned by the learned Judge of the Trial Court for convicting the appellant under Section 21 read with Section 29 of the Act, and as the learned Counsel of the appellant has failed to dislodge those weighty reasons, the appeal, which lacks merits, should be dismissed.

8. The record shows that the respondent No. 2 i.e. Intelligence Bureau Officer in the Office of Narcotic Control Bureau, Zonal Unit, Ahmedabad, who is impleaded as respondent No. 2 in the appeal, is duly served, but he has neither appeared in person nor through his Lawyer.

9. This Court has heard Ms. Shilpa R. Shah, learned Counsel of the appellant and Mr. K. T. Dave, learned Additional Public Prosecutor for the State, at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case as well as the entire evidence on record with reference to broad and reasonable probabilities of the case.

10.1 The contention, that mandatory provisions of Section 42 of the Act were not complied with and, therefore, the impugned judgment should be set aside, is devoid of merits. From the record of the case, it is evident that information was received by Intelligence Officer of Narcotic Control Bureau i.e. by Mr. Devdutt Nanalal Oza that the appellant was to come on September 1, 1998 from Meghraj Bus-stand with heroin. The

information received was immediately reduced into writing by Mr. Oza. This is evident from the testimony of Mr. Oza recorded at Exh. 36. Mr. Oza stands corroborated in his assertion that information received was reducing into writing by him from the contents of the document produced by the prosecution at Exh. 40. Exh. 40, in no uncertain terms, proves that the information, which was received by Mr. Oza, was reduced into writing by him. Thus, there is no manner of doubt that mandatory provisions of Section 42(1) of the Act were complied with by Mr. Oza on receipt of information.

10.2 As far as report to be forwarded to immediate official superior under Section 42(2) of the Act is concerned, Mr. Oza has asserted, in his substantive evidence before the Court, that he had forwarded his report under Section 42(2) of the Act to his immediate official superior i.e. Pavansingh Gajesingh Tomar, who was then Zonal Director of Narcotic Control Bureau. Mr. Pavansingh Gagesingh Tomar, Zonal Director, is examined by the prosecution at Exh. 21. Mr. Tomar has also asserted, in his evidence before the Court, that he had received a report from Mr. D. N. Oza wherein information received by Mr. Oza was incorporated. The record further

establishes that on receipt of report under Section 42(2) of the Act, Mr. Tomar had addressed a letter to ITO Modasa to provide witnesses for an operation to be conducted under the provisions of the Act. Thus, there is no manner of doubt that report under Section 42(2) of the Act was forwarded by Mr. D. N. Oza to his immediate official superior. Though Mr. Oza and Mr. Tomar have been cross-examined at length, nothing could be brought on record to impeach their credibility. The assertion made by Mr. Oza that he had forwarded the report, as contemplated by Section 42(2) of the Act, to Mr. Tomar, who was his immediate official superior, and the assertion made by Mr. Tomar that he had received report made by Mr. Oza under Section 42(2) of the Act, could not be demonstrated to be untrue. Therefore, on re-appreciation of evidence on record, this Court finds that provisions of Section 42 of the Act were fully complied with by Mr. Oza and no benefit can be given to the appellant on the basis that mandatory provisions of Section 42 of the Act were not complied with by Mr. Oza.

10.3 The contention, that mandatory provisions of Section 50 were not complied with and, therefore, benefit should be given to the appellant, is merely stated to be

rejected. Mr. D. N. Oza , in his substantive evidence before the Court, has mentioned that he had informed the appellant that it was necessary to search his person and though Mr. Tomar, who was a Gazetted Officer, was present, he could be searched in presence of a Magistrate or another Gazetted Officer, if so desired by him, but the said offer was declined by the appellant. This assertion made by Mr. Oza could not be demonstrated to be false during the course of his lengthy cross-examination. Mr. D. N. Oza stands corroborated by testimony of Mr. Tomar, who has also asserted before the Court, that offer, as contemplated by Section 50 of the Act, was made by Mr. Oza and declined by the appellant. The fact that offer, as contemplated by Section 50 of the Act, was made and declined by the appellant, is mentioned in the complaint as well as *panchnama* indicating search of person of the appellant and find of brown sugar from his possession. On review of evidence on record, this Court finds that the learned Judge of the Trial Court was justified in coming to the conclusion that mandatory provisions of Section 50 of the Act were complied with by Mr. Oza before effecting search of person of the appellant. The said finding recorded by the learned Judge of the Trial Court could not be demonstrated to be

erroneous by the learned Counsel of the appellant. Therefore, the said finding, being eminently just, is hereby upheld and it is held that mandatory provisions of Section 50 of the Act were fully complied with by Mr. Oza.

10.4 The contention, that the statements of the appellant under Section 67 of the Act were recorded under duress and, therefore, could not have been relied upon by the Trial Court while determining guilt of the appellant, has no substance. It is relevant to notice that till his testimony was recorded in the Trial Court, the appellant did not make any grievance before anyone, including the Court, that his statements under Section 67 of the Act were recored by Mr. Oza under duress. It is relevant to notice that those statements are in Hindi language and in hand-writing of the appellant himself. A bare perusal of those statements makes it evident that a person under duress could not have stated the facts mentioned therein. No material on record could be brought to the notice of this Court which may justify the conclusion that statements of the appellant under Section 67 of the Act were recorded under duress. The testimony of Mr. Oza would indicate that, as in other cases, he had served

summons upon the appellant under Section 67 of the Act and recorded his statements. The record does not indicate that any pressure was exerted on the appellant before his statements were recorded under Section 67 of the Act. On the facts and in the circumstances of the case, this Court is of the firm opinion that the appellant had given voluntary statements before Intelligence Officer Mr. Oza after service of summons upon him and the learned Judge of the Trial Court was justified in acting upon the same while determining guilt of the appellant. The contents of two statements produced by the prosecution at Exhs. 22 and 37 respectively make it very clear that the appellant was found in possession of brown sugar while he was going to effect delivery of brown sugar to another person of Ahmedabad. Thus, the finding, recorded by the learned Judge of the Trial Court on appreciation of evidence of members of raiding party and contents of statements recorded under Section 67 of the Act, that the appellant was found in possession of heroin without pass or permit, cannot be said to be contrary to evidence and no ground is made out by the learned Counsel of the appellant to interfere with the same in instant appeal. The testimony of Mr. Oza read with that of other officers examined in

the case satisfactorily establishes that after the raid was over, samples were drawn in correct manner and sealed as required by law. The evidence clinchingly proves that the sample drawn to be forwarded to FSL was kept in safe custody and forwarded to FSL for analysis through Sepoy Surendra Narayan Datani, whose testimony is recorded at Exh. 34. The report of the analysis indicates that the sample was received intact. Thus, there was no possibility of tampering with *muddamal* sample at all. Further, the record shows that after search and seizure was over, necessary report was made by Mr. D. N. Oza to his immediate official superior, as required by Section 57(2) of the Act. The said report is produced by the prosecution at Exh. 25 on the record of the case.

10.5 This Court has considered the testimony of *panch* Ashokkumar Harivallabdas Gandhi, who is examined by the appellant, as Defence Witness 1, at Exh. 48 as well as the testimony tendered by the appellant himself at Exh. 49. On re-appreciation of evidence adduced by the defence, this Court finds that the testimony of *panch* Ashokkumar Gandhi, recorded at Exh. 48, is of little assistance to the appellant. It is relevant to notice that this witness has admitted that he had gone to Meghraj Guest-House and that he had signed the *panchnama*.

The witness has also admitted that second *panch-witness* had also signed *panchnama* in his presence. In cross-examination by the learned Additional Public Prosecutor, the witness has admitted that his two to three signatures were obtained and that Exh. 18, *panchnama,* was also signed by him. However, what is claimed by this witness is that he had not seen the appellant at all. The testimony of this witness makes it very clear that raid, as claimed by the prosecution, was carried out. It is relevant to notice that none of the prosecution witnesses is on inimical terms with the appellant. Therefore, false implication of the appellant in such a serious case stands completely ruled out. In view of this, the interested version of Ashokkumar, that he had not seen the appellant at the spot, is rightly disbelieved by the learned Judge of the Trial Court, who had advantage of observing demeanour of the witnesses. There is no manner of doubt that the testimony of Ashokkumar is of little assistance to the appellant. Similarly, the testimony of the appellant himself, which is recorded at Exh. 49, is of little assistance to him. In his testimony, the appellant has admitted that he had signed the statements made by him under Section 67 of the Act. In his cross-examination, the appellant has admitted that his statement, which is produced by the prosecution at Exh.

22, was voluntarily made by him and signed by him. He has also admitted that he had given statement which is produced by the prosecution at Exh. 37. He has further admitted that he knew Rajkumar, who had brought him to Meghraj Market on motor vehicle. A bare reading of testimony of the appellant recorded at Exh. 49 makes it very clear that he was aided and abetted by others who are absconding. In view of the contents of statements recorded under Section 67 of the Act, there is no manner of doubt that the appellant and others had brought brown sugar to be handed-over to Rajubhai of Ahmedbaad. Therefore, conviction of the appellant under Section 21 read with Section 29 of the Act cannot be regarded as erroneous. At this stage, it would be advantageous to refer to provisions of Section 54 of the Act. Section 54 *inter alia* provides that in trials under the Act, it may be presumed, unless and until the contrary is proved, that the accused has committed offence under Chapter IV in respect of any Narcotic Drug or Psychotropic Substance for the possession of which he fails to account satisfactorily. The evidence adduced by the prosecution satisfactorily establishes that the appellant was found in possession of brown sugar without pass or permit. The appellant has failed to account for the same satisfactorily. Therefore, presumption, as contemplated

by Section 54 of the Act, will have to be raised against the appellant in the light of facts proved by the prosecution. On overall view of the evidence adduced by the prosecution, this Court finds that the conviction of the appellant under Section 21 read with Section 29 of the Act is well founded and no ground is made out by the learned Counsel of the appellant to interfere with the same in instant appeal. The result is that the appeal, which lacks merits, deserves to be dismissed.

11. For the foregoing reasons, the appeal fails and is dismissed. *Muddamal* be preserved as trial is yet to take place against the absconding accused.

[J. M. PANCHAL, J.]

[H. B. ANTANI, J.]

/shamnath